



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 20, 2022

IN THE MATTER OF:

Appeal Board No. 625761

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination, ruling the claimant not entitled to receive benefits, effective January 10, 2022, on the basis that the claimant was unable to file a valid original claim pursuant to New York Labor Law § 511 and § 527 because the claimant had no base period

employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed September 9, 2022 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant resides in South Carolina. The employer, a law firm based in New York, hired the claimant to work remotely for the employer from South Carolina. She began work from South Carolina on February 28, 2021.

The law firm handles small claims' court actions and litigation related to Port Authority toll fees. The claimant acted as a legal negotiator, a claims' investigator, and an account manager for such actions. The employer provided

the claimant with a computer, a mouse, and the necessary software application. She had daily telephone meetings with the employer's New York based team leader and phone calls were directed to the claimant in South Carolina via the computer.

The claimant worked from her home in South Carolina for the period at issue. While the claimant continued to work remotely for her New York employer, she also spent one month, during her tenure, in North Carolina and two weeks in Florida.

The claimant last worked for the employer on January 4, 2022. The claimant filed for unemployment insurance benefits in New York on January 13, 2022, and her claim was made effective as of January 10, 2022. Her base period ran from the last quarter of 2020, through the fourth quarter of 2021, and although the claimant had earnings from the New York employer, her base period reflected no covered earnings.

OPINION: New York Labor Law § 511 (2) and (3) requires that services be

localized in New York State to be included in covered employment. Service is deemed localized within the state if it is performed entirely within the state or is performed both within and without the state, but the work performed without the state is incidental to the services within the state.

The credible evidence establishes that the claimant, a resident of South Carolina, performed all services for her New York employer from outside of New York State. The Court of Appeals, in Matter of Allen, as per New York Labor Law § 511, in determining jurisdiction of the unemployment insurance claim,

sets out "four tests -localization, location of base of operations, source of direction or control, and employee's residence-to be applied successively to an employee's entire service performed for the employer, without and within the state." The Court explained "the purpose of Labor Law § 511 is to bring,

within the scope of the New York act, those employees who work both in New York and one or more other states, when the most substantial contacts are in New York." The Court continued "this rule was intended to ensure that unemployment benefits are paid by the state where an unemployed individual is physically present to seek new work... physical presence (emphasis added) is the most practicable indicum of localization for the...telecommuter." As a

result, the claimant's physical presence is the key to determining the locus of the employment for purposes of unemployment insurance benefits. (See Matter of Allen, 100 NY2d 282 [2003].)

Consequently, the claimant herein performed all work for the New York law firm, remotely from outside of New York. Hence, we conclude that the claimant's physical presence outside of New York State for the entirety of her employment for the employer herein renders her ineligible for unemployment insurance benefits in New York. (See also Appeal Board Nos. 557288A, 561646 and 551189.) Accordingly, due to her ineligibility for unemployment insurance benefits, we find that the claimant had no covered base period employment and as per New York Labor Law § 527(1), we further conclude that the claimant cannot establish a valid original claim for unemployment insurance benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, ruling the claimant not entitled to receive benefits, effective January 10, 2022, on the basis that the claimant was unable to file a valid original claim pursuant to New York Labor Law § 511 and

§ 527 because the claimant had no base period employment, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER